

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 26, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3307

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CARL W. RADY,

Plaintiff-Appellant,

v.

**NANCY BERGSTROM,
JANET BEYER THUMS,
MARLENE FOX AND
JAMES F. BLASK,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Lincoln County:
ROBERT A. KENNEDY, Judge. *Affirmed.*

LaROCQUE, J. Carl Rady appeals a circuit court judgment dismissing his complaint for failing to state a claim. This court affirms.

Rady's small claims complaint consists of a list of thirteen criminal statute numbers and a reference to § 893.82(2)(c), STATS., the statutory definition of "damage" or "injury" for purposes of the required notice of claim against state employees as set forth in the balance of that statute. Following the statutory recitation, the complaint alleges: "All illegal actions by defendants against

plaintiff between dates of November 1, 1993 and February 14, 1995." The defendants moved to dismiss, and the court heard the motion by telephone. Rady did not participate. The motion was granted.

Whether a complaint states a claim is a question of law this court decides de novo. See *Williams v. Security S & L Ass'n*, 120 Wis.2d 480, 482, 355 N.W.2d 370, 372 (Ct. App. 1984). This court is limited to the facts set forth in the complaint to determine whether a complaint states a claim. *Jensen v. Christensen & Lee Ins.*, 157 Wis.2d 758, 762, 460 N.W.2d 441, 443 (Ct. App. 1990). The purely conclusory nature of the complaint, unsubstantiated without any reference whatever to factual allegations, sustains the trial court's decision.

Rady suggests on appeal that the complaint was improperly served in the first instance. First, if the complaint is facially defective, such an allegation is irrelevant. Further, the issue was not raised in the trial court and is unsupported by any evidence in the record. This court need not address an issue raised for the first time on review. *Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). Assertions of fact that are not part of the record will not be considered. *Jenkins v. Sabourin*, 104 Wis.2d 309, 313, 311 N.W.2d 600, 603 (1981). The judgment dismissing the complaint is therefore affirmed.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.